UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-44481-rdd

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In the Matter of:

DELPHI CORPORATION, et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

September 24, 2009

10:03 AM

B E F O R E:

HON. DELPHI CORPORATION

U.S. BANKRUPTCY JUDGE

Forty-Seventh Omnibus Hearing

Hearing RE: Second § 1121(d) Creditors' Committee Exclusivity Extension Motion - Motion For Order, Solely As To Creditors' Committee, Extending Debtors' Exclusive Periods Within Which To File And Solicit Acceptances Of Reorganization Plan Under 11 U.S.C. § 1121(d) (Docket No. 18884)

Hearing RE: Pre-Effective Date Accommodation Amendment Motion - Expedited Motion For Order (I) Under 11 U.S.C. § 363 Authorizing Debtors To Fund Fee And Expense Agreements In Connection With Thirty-Third Amendment To Accommodation Agreement And (II) Under 11 U.S.C. § 364 For Approval Of Accommodation Agreement Amendments Through Effective Date Of Modified Plan Of Reorganization (Docket No. 18913)

Hearing RE: Debtors' Thirty-Fifth Omnibus Claims Objection - Debtors' Thirty-Fifth Omnibus Objection Pursuant To 11 U.S.C. § 502(b) And Fed. R. Bankr. P. 3007 To (I) Expunge (A) Books And Records Claim, (B) Certain Salaried Pension And OPEB Claims, (C) Certain Wage And Benefit Claims, And (D) Certain Individual Workers' Compensation Books And Records Claims And (II) Modify And Allow Certain Claims (Docket No. 18826)

Claims and Contracts Hearing

Hearing RE: (I) Certain Objections To Non-assumption Of Certain Contracts And Leases, Assumption And Assignment Of Executory Contracts And Unexpired Leases, And Cure Amounts, And (II) Certain Other Claims Matters

Hearing RE: Doc #17767; Aikoku Alpha, Inc. Objection to Notice of Non-assumption Under the Modified Plan with Respect to Certain Expired or Terminated Contracts or Leases Previously Deemed to Be Assumed or Assigned Under Confirmed Plan

Transcribed by: Hana Copperman and Pnina Eilberg

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P R O C E E D I N G S

THE COURT: Be seated. Okay. Delphi Corporation.

MR. BUTLER: Your Honor, good morning. Jack Butler, along with Kayalyn Marafioti, here for the company's forty-seventh omnibus hearing. Your Honor, just a word of note, we have two agenda today. There are two separate hearings that have been scheduled for this morning. The first is the omnibus hearing. There are seven matters on that hearing. Only a few of those matters are going forward, and only the claims objection matter has objections filed, and we're not going to deal with those objections today, as is our custom.

And then there is a separate hearing agenda with respect to certain objections to non-assumption of certain contracts and leases, another of the 365 matters that we've been involved with in these cases as we move towards substantial consummation of the modified plan. That agenda has thirty-six matters on it, and our understanding is that Your Honor may have a bench ruling with respect to one matter. There is the Court's consideration of the proposed order that was attached to our omnibus reply, and there were a couple of stipulations that the Skadden and Togut firms will have to present to the Court with respect to that, but there's no other contested matter that's going to go forward with respect to that agenda.

Our request to the Court, if the Court's willing, is

that we would deal with the omni matters now, take a five minute recess, change out the teams, let some of us be excused who are not involved in the other portion of the second hearing, and for Delphi Mr. Meisler and Mr. Berger would handle the second hearing.

THE COURT: That's fine.

MR. BUTLER: Thanks. So, Your Honor, we're going to move forward, then, with the omni hearing. Both agendas have been made available in the courtroom for people in the courtroom, and the first two matters are matters that are being adjourned. The first one, Furukawa's administrative expense motion, filed at docket number 18706, there has been substantial discussion between Furukawa and Delphi in seeking to resolve this. Furukawa has agreed to adjourn this matter without date, and it would be their obligation, if they want to proceed with it, to re-notice it in connection with the case management order.

THE COURT: Okay.

MR. BUTLER: Matter number 2 is the AT&T administrative expense motion claim at docket number 18737. Again, there's been substantial progress on this matter, and the parties have agreed to adjourn this off of the omni track onto the claims track, and it would be adjourned to the October 7, 2009 claims hearing.

THE COURT: Okay. That's fine.

MR. BUTLER: Thank, Your Honor. Moving to the first of the uncontested matters, matter number 3 on the agenda is the Section 1121(d) creditors' committee exclusivity extension motion at docket number 18884. The request is to move the applicable dates to November 30, 2009 and January 31, 2010. This, at this moment, is entirely prophylactic. We're moving towards substantial consummation of the modified plan in October. This is done strictly as a prophylactic measure in case the plan is not substantially consummated, which we think is highly unlikely at this moment, and there are no objections to the request.

THE COURT: Okay. Let me just -- I have no problem with the motion, and I'll grant that relief. Let me just you separately, do you have a closing date yet or --

MR. BUTLER: We do, Your Honor. Our intention is to close as soon as practical after all of the global regulatory clearances have come in. We believe that's going to happen during the week of October 5th. We've indicated in the financing motion, which I'll take up shortly, that we expect to close during the week of October 5th. That's the current expectation. The exact day tends -- is really focused on trying to sort through regulatory clearances outside of the United States, which our people are actively focused on here.

I would comment that the parties continue, both the parties to the pure credit bid that was accepted and General

Motors, as new owners working with Delphi, continue to go through a hundred plus page closing checklist. There are meetings almost every day. There is the usual give-and-take, and it goes on. One actually has to negotiate all the documents required for a closing of this complexity. I don't think there's anything, certainly from Delphi's perspective, that rises at this moment to the level needing any guidance from Your Honor in connection with the plan modification order. People continue to work through things. I think everyone, on all sides, is trying to come to what I call appropriate social resolutions of issues where a clarification is needed here or a perspective is needed there or people are applying the words to actual real life situations across the, frankly, across the globe as people sort through all of these issues. I think people are working together and trying in good faith to move towards substantial consummation of the plan.

If we think, at some point, Your Honor, we need guidance we'll contact chambers, but at that moment I think people are making good progress on their own. I hope that will continue, and, as I say, I think it is the parties' expectations that the plan effective date will occur during the week of October 5th.

THE COURT: Okay. All right.

MR. BUTLER: Your Honor, the next matter on the agenda is the debtors' pre-effective date accommodation amendment

motion at docket number 18913. This is, you may recall, Your Honor, the last time we were before the Court in connection with the accommodation agreement was in connection with the sixteenth amendment to the accommodation agreement. That order was granted on July 24th. We also obtained authority to pay certain fees and expenses of parties to the accommodation agreement at that time. We haven't sought approval of any amendments to the accommodation agreement subsequent to the Court's approval of the modified plan, and the debtors have expressed their views in the motion we filed that certainly the approval of the, continuing approval of these accommodation agreement amendments as we move to the modified plan may not actually be necessary, given the record at the auction and the record at the plan modification hearing with respect to the accommodation agreement, which is to be extended through the closing date of the modified plan. But, on the other hand, the parties are working together. There are agreements that our DIP lenders would like us to confirm. They'd like the comfort order of this Court on certain of these matters, so we've come back for this hearing.

We've asked in this hearing, and there are no objections to it -- we discussed it with the committee -- that the approval here include the approval of any further extensions through the date of the modified plan. There are some amendments to fee letters, and an additional fee letter

that's been put in place here. I point out there is a de minimis fee letter that has been made available for Your Honor's review and for the committee's review involving the administrative agent, which has been compensated, I think, for only two or three of the thirty-three amendments that they've had to process through. And the company has agreed to these letters. We don't expect there to be any further letters between now and the closing date. We believe these amendments reflect all the letters that we'll be dealing with.

So, Your Honor, I can go through what's in the motion, but it's, as I understand it, otherwise uncontested, and I can answer any questions Your Honor might have.

THE COURT: Well, I don't have a problem with, I guess, with approving extensions of the accommodation agreement. And I don't think I have a problem with the agent's fee letter in that as long as the amendments are necessary, and I guess it's retroactive, too. I mean, it deals with prior amendments as well.

MR. BUTLER: Correct, Your Honor.

THE COURT: I was puzzled by the changes to the, and the addition of, I think, one other fee letter. The changes add a lot of different professionals, and it all seems to be related to the closing of the transaction. In other words, it seems to me, I guess, just reading between the lines of the other fee letters, that the non-debtor parties to these letters

are wearing their buyer hat. Maybe I'm wrong about that, but I got that sense, and I didn't know where that was coming from.

MR. BUTLER: Well, Your Honor, I think, again, like many other issues in this case, particularly as we move towards a consensual substantial modification of the modified plan, the company working with the parties to the Master Disposition Agreement are seeking to have what we think are appropriate negotiated outcomes of what otherwise could be disputes. And the general view here is that there are costs being incurred in connection with the transition team, that is the implementation of the pure credit bid, and it is, at least for what I will call the lead members of that pure credit bid, the two or three funds that are leading it and that are really at the central of the day-to-day, work of the day-to-day transition, the view is that that expense ought to be, because a pure credit bid is an exercise of a remedy under the DIP agreement, that, in fact, it should be paid for by the debtors. And the debtors have concluded, in their business judgment, that looking at this transaction as a whole and trying to work towards a consensual closing, that these particular amendments to the expense letters are not inappropriate. They --

THE COURT: Well, does the MDA say that each side will bear its own fees and expenses or is it silent on that?

MR. BUTLER: I think it's silent on that point, Your Honor. That's my recollection. I don't think it requires. I

just don't recall. Mr. Siegel is here.

MR. SIEGEL: THE MDA can be interpreted, in our view, in either way in good faith. I wouldn't go as far as Mr. Butler, but I do think that you can read the document in either way, and we believe the appropriate way to read it is what is set forth in the debtors' motion today.

THE COURT: Well, the motion doesn't really discuss this issue at any --

MR. SIEGEL: No, no. What I mean by that is that all the parties to the MDA have been noticed of this and have actually approved this amendment.

THE COURT: All right.

MR. SIEGEL: So that those parties have all decided that this interpretation of the document is the one that they think makes the most sense.

THE COURT: Well, I guess that leads to my next question, which may be the only question that's worth knowing the answer to here, which is whose ox is being gored here? I.e. there's clearly going to be additional money spent by the debtors. Are the buyers essentially paying themselves out of their own assets, or is some other constituency in the case adversely affected by this money being paid out?

MR. BUTLER: Your Honor, I think it's a good question. I think I have an answer and perspective on that.

THE COURT: Okay.

MR. BUTLER: First, this is not a request for reimbursement under the Master Disposition Agreement. This is a request for reimbursement under the DIP financing agreement, and that's a distinction, I think, with a difference, but I think it still is important for the question you're asking, because under the terms of the Master Disposition Agreement the monies that are being spent now on this, the reimbursements that are being spent, are coming from two sources, monies that have been funded by General Motors and cash collateral that the lenders have, which is being consumed.

THE COURT: Okay.

MR. BUTLER: Both of those things are occurring. It is anticipated that around the time the closing occurs there will be very little, if any, cash collateral left, and GM's monies will have been consumed. All right? And then we'll have the transaction occur, and, as you know, under the terms of the Master Disposition Agreement the DIP loan is converted to equity. General Motors waives its administrative claims for all of those things. So the sources of funding, if you will, for these expenses are those two sources.

THE COURT: And the people who are providing those two sources have notice of this and have agreed to it?

MR. BUTLER: Correct, Your Honor. The people who have it are General Motors on the one hand and the DIP lenders who have approved this amendment on the other. And this is --

THE COURT: Including the fee letters?

MR. BUTLER: Correct. And this is --

THE COURT: Okay.

MR. BUTLER: And the fee letters, that's why I said it's a distinction with a difference. If this was a master disposition agreement issue it would be more complicated. The fact that the DIP lenders have not only approved these but required that they be funded in connection with the thirty-third amendment, and the required lenders have approved the thirty-third amendment, that, I think, is an important distinction for the purposes that we discussed. I also think it's important to know, remember under the Master Disposition Agreement, that if there is a cash balance left in the company on the closing date that cash balance gets swept back to General Motors. So it's not as though if we had --

THE COURT: Okay.

MR. BUTLER: -- a lot of money left that somehow that would fall into some bucket for somebody that they would let us have.

THE COURT: All right.

MR. BUTLER: So it's --

THE COURT: All right.

MR. BUTLER: Those are the mechanics of it, and that's how the --

THE COURT: Well, I guess that resolves any doubts I

had about this. You are, effectively, paying yourselves then. Or -- and/or GM is aware of this and has not objected.

MR. SIEGEL: GM, because of the way the LSA was set up, GM has to approve every single one of these amendments, the accommodation agreement, and they approved this one.

THE COURT: Okay. In light of that I'll approve the motion in full, including their aspect of it that seeks approval of these fee letters.

MR. BUTLER: Thank you, Your Honor.

THE COURT: Okay.

MR. BUTLER: Your Honor, the fifth matter on the agenda is the debtors' thirty-fifth omnibus claims objection at docket number 18826. This is an objection focused, among other things, on employee related claims and allowed settled claims. There are 470 proofs of claim that are on the objection. We have withdrawn, as I'll describe in a moment, seven claims from the objection that we're not seeking relief on today. And there have been responses filed covering twelve claims, as well, that are now contested, and we won't be dealing with those today. Those we'll move over to the claims tract, leaving 451 proofs of claim that we're asking Your Honor to deal with today, as I'll describe.

The 470 claims we originally filed on the thirty-fifth omnibus claims objection asserted approximately 37 million dollars in claims plus unliquidated amounts. We, as I

indicated, received ten timely filed responses. Those cover twelve proofs of claim, asserting aggregate claims of about 1.9 million in liquidated amounts together with unliquidated amounts. We filed an omnibus reply, which includes a chart summarizing these responses, indicating the claims covered by these responses that we adjourn to a future hearing date in accordance with the claims order.

There are seven proofs of claim that we're withdrawing today and one proof of claim we're modifying in connection with the proposed order we're asking the Court to consider. We're withdrawing objections as to the proof of claim number 12669 filed by Contrarian Fund, LLC. Proof of claim numbers 10681, 13249 and 13341 filed by Henkel Corporation. Proof of claim number 7247 filed by Exxon Mobil Oil Corporation. Proof of claim number 416 filed by Hitachi Corporation and proof of claim number 13572 filed by United Plastics Group, Inc. We have withdrawn these after conferring with counsel to these claimants and have concluded, based on those discussions, that these claims either should be resolved on another track or that there were errors in the assertions made in the motion and that we should withdraw the objections.

THE COURT: Okay.

MR. BUTLER: With respect to proof of claim number 9263, which was filed by Trans-Tron Ltd., and subsequently transferred in part to Bear Stearns Investment Products, the

proposed order has a different modification as to how the claim will be allowed in terms of the split between Trans-Tron and Bear Stearns. The amount allocated to Trans-Tron will be reduced by approximately 218,000 dollars, and, ultimately, there will be an allocation to Bear Stearns of $2,240,718.54, with the balance being to Trans-Tron.

Your Honor, after taking effect, then, to these seven withdrawals and this modification, the relief we're seeking today on an uncontested basis deals with 451 claims, asserting liquidated claims of approximately 28.1 million plus certain unliquidated amounts. Briefly, in looking at these claims, there are 244 pension and OPEB claims, in the aggregate amount of approximately 12.2 million, which we're asking the Court to disallow and expunge. There are 23 wage and benefit claims in the amount of 473,000, which we're asking the Court to disallow and expunge. There are 166 individual workers' compensation claims in the amount of approximately 5 million, which we're asking the Court to disallow and expunge. There's one modified and allowed claim that asserted priority treatment, in part, because of a reclamation claim. We're asking Your Honor to allow as an entirely unsecured claim in the amount of 610,000. And there are seventeen claims allowed pursuant to settlement, and we're asking Your Honor to allow these claims as unsecured claims in the aggregate amount of about 9.9 million.

We've laid all this out, Your Honor, in the proposed

order. We have followed the normal claims protocol here, and we have given particularized notice of this motion to the claimants involved.

THE COURT: Okay. In light of that, and, in particular, in light of the individualized notice to each claimant and the fact that the debtors are now asking me to disallow or reclassify or reconfigure only claims where there's no opposition or there's, in a couple of cases, agreement, I'll grant that relief.

MR. BUTLER: Thank you, Your Honor. Your Honor, the other two matters on the agenda for the omni today were in the adversary proceeding involving the CSC case at case number 09-01271. These involved a debtors' motion for determination at docket number 30 and plaintiff's motion for leave to file an amended complaint at docket number 36. The parties have agreed to adjourn both those motions off of this agenda to a date to be determined between the parties and the Court.

THE COURT: Okay.

MR. BUTLER: So I've nothing to report on those.

THE COURT: Does that mean there's some progress in maybe resolving this matter or --

MR. BUTLER: I wouldn't go so far as to make --

THE COURT: To say that.

MR. BUTLER: -- those statements.

THE COURT: All right.

MR. BUTLER: As you know, my colleague, Mr. Hogan, is dealing with this --

THE COURT: All right.

MR. BUTLER: -- and he told me that they just, the parties agreed they did not want to proceed today on those motions.

THE COURT: Okay. All right.

MR. BUTLER: All right?

THE COURT: Okay. So you can hand up those orders, and I'll just stay out here, but we can take a break.

MR. BUTLER: Great. We'll take about five minutes, Your Honor, and we're going to switch out. And those of us involved in the omni that aren't involved in the claims would ask to be excused, Your Honor.

THE COURT: That's fine.

MR. BUTLER: Thank you.

(Recess from 10:24 a.m. to 10:26 a.m.)

THE COURT: Corporation.

MR. MEISLER: Good morning, Your Honor. Ron Meisler of Skadden, Arps on behalf of Delphi Corporation and its affiliated debtors. Your Honor, this is the second half of our hearing. This is the claims and contract hearing. Your Honor, we have thirty-six matters on the agenda. Your Honor, matter 1, American Aikoku, we understand that Your Honor is prepared to rule today.

THE COURT: I'll give a ruling at the end of this hearing.

MR. MEISLER: Terrific. Thank you very much. Your Honor, we also have -- we have another thirty-five matters. Please note that matters 20 through 36 are continued matters. If Your Honor likes I'm happy to go into those.

THE COURT: No, that's fine.

MR. MEISLER: Terrific.

THE COURT: I mean, I think the agenda is self-explanatory.

MR. MEISLER: Thank you, Your Honor. Your Honor, I'd first like to just give the bigger picture if it's okay with the Court. Your Honor, we started with sixty-two objectors, and we're happy to announce that at the conclusion of this hearing, should Your Honor enter the proposed order, we will have taken care of three-quarters of our objectors.

THE COURT: And, again, this is to the proposed assumption and assignment of their contracts, right?

MR. MEISLER: That is correct, Your Honor.

THE COURT: Okay.

MR. MEISLER: Your Honor, today we have seventeen objectors that we resolved their issues. I think of it, actually, as sixteen and a half, because there's one objection by AB Automotive, otherwise known as the TT Group, and that objection, Your Honor, we resolved more than twenty contract

issues with the TT Group. However, this is one counterparty, BI Technologies, and that contract counterparty, we still have an issue with and we've continued it to another date.

So, Your Honor, for that reason you'll see AB Automotive and its affiliates listed both as a consensual matter and, as well, as a continued matter.

THE COURT: Okay.

MR. MEISLER: Your Honor, that leaves, again, as I said, we have sixteen objectors plus the AB Automotive Group as objectors that we will hopefully get to a consensual resolution, and when we come back in October we hope to present stipulations and otherwise represent to the Court that we've resolved these issues.

Your Honor, with respect to matter number 2, which we have as contested matter, and matter number 3, neither of them today are contested matters. Your Honor, the Linamar objection has been resolved. It's been resolved by e-mail confirmation. And, Your Honor, I'm happy to go into the details of this particular matter, but, again, it is resolved, and, therefore, it is on our proposed order.

THE COURT: Okay. That's fine.

MR. MEISLER: Your Honor, with respect to the Timken Company, Your Honor, I have been in touch with Timken's counsel fairly regularly. We have agreed to adjourn this matter to the October 21st hearing so that we can try and reach a consensual

resolution. Your Honor, I do believe that we're close, but, again, in order to try and reach that consensual resolution we elected, consensually, to move this to the October 21st hearing.

THE COURT: Okay.

MR. MEISLER: Your Honor, moving forward to the uncontested section of the agenda, matters 4 through 19, again, they are all consensual. Matters 4 and 5, Bosch and Autocam, I believe each of their counsel wants to make a statement. I am happy to go through each and every one of the settlements, Your Honor, however you choose to proceed.

THE COURT: Well, let me hear from counsel on the Bosch and Autocam matters first.

MR. BERGER: Judge, Neil Berger, Togut, Segal, for the debtors. I'm not certain if Mr. Toering is on the line for Bosch.

THE COURT: I don't have him on the list of people who are on the line.

MR. BERGER: Your Honor, may I be heard on this matter?

THE COURT: Sure.

MR. BERGER: I think it's important that we have a record. I'll start with the why I'm here and then explain how to resolve this and the debtors' perspective. Bosch's counsel wrote me an e-mail late last night. We have a signed

stipulation resolving their limited response to the notice on the modified plan. Mr. Toering, on behalf of Bosch, expressed concern about Bosch being bound by the modified plan. Your Honor, there's a provision in the order that we'll present today. It's the same form as you previously approved in the first and second omni orders that provides that the resolved contract counterparties be subject to the findings and conclusions in Your Honor's order which approve the modifications of the plan, particularly Your Honor's findings and conclusions concerning the debtors' authority to assume and assign unexpired agreements. We have that in there because we believe that's settled. Counterparties, like anyone else who received notice of the plan and didn't object to the modified plan provisions, ought to be bound by the plan provisions. It means implementation, classification, injunction, Your Honor's findings about adequate assurance of future performance and cure, and the debtors' general authority to assume and assign contracts.

Bosch's response to the notice regarding the modified plan was limited to the contracts that are addressed in our settlement agreement. Bosch's response, generally, actually, specifically, was we don't have enough information. We don't know whether or not we ought to object and whether or not we have a cure. These are intellectual property rights, and under non-applicable, non-bankruptcy law in many instances the

counterparty has the ability to withhold consent.

We provided specific information about the intellectual property agreements that we sought to assume and assign. We and Bosch, my colleague is here today, worked with Bosch and their counsel and we came to a settlement about how those contracts would be assumed and assigned, and they granted, and then there were a certain subset of contracts that neither party could find and we deferred the issue of consent until some other time if, and when, it every became relevant. We have a signed stipulation. That stipulation specifically references Your Honor's order approving the modified plan. We think that Bosch is time barred from objecting to any provision of the modified plan or Your Honor's order, which is now final, as to any issue other than the contracts that are subject to our settlement agreement. And our settlement agreement has a consensual resolution as to the disposition of those agreements.

For that reason, Your Honor, for those reasons, we think that Bosch, like any other settled counterparty, ought to be subject to the plan provisions. There are specific provisions in the settlement agreement that specifically reserve the parties' rights, claims and defenses pertaining to those agreements. But, more generally, this counterparty's resolve ought to be subject to our plan.

THE COURT: Well, is that an issue I need to decide

today? I mean, if you have an agreement --

MR. BERGER: Well, we're go--

THE COURT: -- on the specific contracts it doesn't sound like there's any remaining issue.

MR. BERGER: There is no remaining issue on the particular contract.

THE COURT: Oh.

MR. BERGER: We would like Bosch included in the exhibit of resolved counterparties and be subject to the omni order that we're submitting this morning.

THE COURT: You have a separate stipulation?

MR. BERGER: And, yes, Your Honor, you're leading me to my last point, is that the stipulation is a more specific document that regulates the parties' conduct concerning to the contract between Bosch and Delphi. We'll be governed by that. It's the more general provisions of the plan and Your Honor's findings about adequate assurance we'd like them to be bound by.

THE COURT: But the stipulation agrees to the assumption, right?

MR. BERGER: Correct.

THE COURT: So I think I could just so order the stipulation. I mean, I don't see why I need to do anything else. The confirmation order is what it is. It's out there. I don't --

MR. BERGER: Sorry.

THE COURT: In a way, this would just give them another issue to appeal. I don't see why you'd --

MR. MEISLER: Your Honor, if I may, Ron Meisler of Skadden, Arps? Pursuant to the order approving the modified plan, all the 365 objectors were carved out.

THE COURT: Well, I -- okay. Go ahead.

MR. MEISLER: So they were carved out of that order, and at least what was contemplated on the debtors' side was that once we resolved the objection they would then be bound by the order confirming the modified plan. And that's all we're simply doing.

THE COURT: Well, but doesn't that order specifically deal with that set of facts? The carve out recognizes that once the cure issues are resolved the order is binding on them too, doesn't it, as I remember?

MR. MEISLER: Your Honor, I think it's uncertain, and for that reason, as a precautionary measure, we have a very simple first decretal paragraph that simply explains that the parties that have been resolved are now subject to the terms of the confirmation order approving the modified plan.

THE COURT: Well, and that's fine for anyone that doesn't oppose it. I'm just reluctant to create an issue if there's some amorphous dispute over it with Bosch which isn't ripe. I just don't think -- I mean, you have a settlement with

them. They're agreeing to the assumption and assignment. I don't see what else. I mean, that's the only aspect of the carve out of the order that would apply, and now that's resolved. Are you concerned Bosch is going to do something or is this just hypothetical?

MR. BERGER: I don't think there's a concern that they're going to do anything, but, as I said earlier, there's a reservation of rights as to the contracts. We don't want to be in a situation, Your Honor, where there's some question about whether or not we're able to enforce provisions of the plan. I presume, I'm gathering, and I don't mean --

THE COURT: Well, I don't see why you -- I mean, the plan -- so I don't understand. It's an assumption and assignment order, but it says that it may not, it may conceivably not be assignable?

MR. BERGER: No, no. No. Not at all. It would be outside of the scope of the assumption and assignment if Bosch came back to this Court, or we had to come back to this Court to enforce some provision of the plan.

THE COURT: Right. So --

MR. BERGER: I wouldn't want Bosch to have the ability to say we are not bound by the plan because --

THE COURT: But there's no reason why they could say that. And their time to appeal that is past. I'm just reluctant to create an issue that they could appeal when

they've already missed their time to appeal.

MR. MEISLER: Your Honor, one example, however, would be just suppose that they feel that they're not bound by the third party releases.

THE COURT: But that wasn't part of the carve out. Right? The carve out just dealt with the assumption and assignment issues, didn't it? I mean, I don't have -- maybe I should -- do you have the carve out?

MR. BERGER: Your Honor?

THE COURT: Then I could take a look at it. But my recollection of it was that the only aspect of the carve out was as to the findings with regard to cure and adequate assurance of future performance for people that had not had notice that their contract was going to be assumed and assigned.

MR. BERGER: Your Honor --

THE COURT: I mean, every other aspect of the plan is binding on them.

MR. BERGER: Your Honor, we appreciate your observations to take them on board. And with the record that we've made this morning --

THE COURT: Okay.

MR. BERGER: -- we'll modify the order, the omnibus order, and we'll have Your Honor, ask Your Honor to --

THE COURT: Well, I don't know. I mean, if everyone

else -- the only reason I'm hesitating on Bosch is you've suggested to me that maybe Bosch has a different view of this.

MR. BERGER: I can't hear you. I'm sorry.

THE COURT: The only reason I'm hesitating on this is with regard to Bosch. If the other parties to executory contracts that you've now resolved are on board with having this language in the omnibus order, I don't have any problem of having it in there. I do have a problem with forcing it on someone who thinks that it shouldn't be forced on them, particularly if it's not really an issue today, because that would just, to me, invite an additional round of litigation with that one person, who I think is just Bosch. I don't have a problem with it being in the order as to everybody else.

MR. BERGER: Very well, Your Honor.

THE COURT: And if you have a stipulation, a separate stipulation with Bosch that makes it clear that their contracts are going to be assumed and assigned, I could so order that and they're bound. And I think they're clearly bound by the rest of the plan.

MR. BERGER: With that said, Your Honor, we'll submit the order without Bosch being listed and we'll take it from there.

THE COURT: Okay. Because you have a separate stipulation with them, right?

MR. BERGER: I do have a stipulation. I have it on

disc with me this morning, Your Honor.

THE COURT: Okay. So you can just write "so ordered" on that, or we can write "so ordered" on it.

MR. BERGER: On the stipulation?

THE COURT: Yes.

MR. BERGER: Well, I don't want to step over bounds, Your Honor. I've never signed your name on a "so ordered" block --

THE COURT: No, no. But it has a "so ordered" block.

MR. BERGER: It does. It does.

THE COURT: So I could just write my name on it.

MR. BERGER: Yes. That's fine.

THE COURT: Fine. Okay.

MR. BERGER: It's hard for me to hear you from the podium this morning.

THE COURT: I'm sorry.

MR. BERGER: I thought you were asking that I can form your signature.

THE COURT: No, no, no. I didn't know whether you had a "so ordered" block on it.

MR. BERGER: Okay, Your Honor. Thank you.

THE COURT: All right. It just doesn't seem to me that given the issue they've raised hypothetically now, that we should give them another opportunity to appeal something that they sat on before.

MR. BERGER: Yes, Your Honor, and, hopefully, we'll never have to confront an issue about it.

THE COURT: It doesn't sound like you will --

MR. BERGER: No.

THE COURT: -- if you've already dealt with it --

MR. BERGER: Okay. Thank you.

THE COURT: -- with the contracts.

MR. MEISLER: Thank you, Your Honor.

THE COURT: Okay.

MR. MEISLER: Your Honor, in regard to matter number 5, Autocam Corporation, counsel to Autocam had asked to make a very short statement.

THE COURT: Okay. Are they on the phone?

MR. GREGG: Good morning, Your Honor. John Gregg on behalf of Autocam Corporation

THE COURT: Good morning.

MR. GREGG: Autocam is withdrawing its objection to the debtors' proposed assigning of executory contracts. They've found the representations set forth in paragraph 7 of the debtors' second omnibus reply, which states that Delphi is essentially assigning all of Autocam's contracts, GM components. The one caveat is that Autocam is not prepared to withdraw its objection to the extent the debtors seek to assign the agreements to any other party other than --

THE COURT: Okay. But that's who you're assigned them

to, right?

MR. MEISLER: That's correct, Your Honor,

THE COURT: All right. So that's fine, and that's noted on the record.

MR. GREGG: Thank you, Your Honor.

THE COURT: Okay.

MR. MEISLER: Thank you, Your Honor.

THE COURT: Your Honor, matters 6 through 19 have all been consensually resolved. Several by stip, some by withdrawals, some by e-mail confirmation.

THE COURT: Okay.

MR. MEISLER: Your Honor, as I mentioned, I'm happy to proceed with each matter individually and give you a summary.

THE COURT: I don't think so. The only issue I have is the debtor is clearly free to withdraw, or the party is free to withdraw. And, obviously, you can submit a stipulation. I'm not quite sure what the effect of the e-mail -- I mean, did the e-mail stipulation say that we're prepared to agree to this and withdraw as long as you agree to the following? I just want to make sure you --

MR. MEISLER: Exactly.

THE COURT: All right.

MR. MEISLER: It simply -- in a sense it's a letter agreement.

THE COURT: That's fine. So that -- I don't think you

need separate approval for those.

MR. MEISLER: Thank you, Your Honor.

THE COURT: Okay.

MR. MEISLER: Your Honor, on that note, as I mentioned, matters 20 through 36 are continued. Your Honor, the agenda lists the -- matter 20 which is the Sweetens motion. Your Honor, the agenda lists that as adjourned to October 21st. Your Honor, I understand that we also have October 22nd set as a claims hearing and the Sweetens have requested that we have that hearing on the 22nd.

THE COURT: I'm sorry. This is for November 22nd?

MR. MEISLER: October 22nd. I'm sorry.

THE COURT: What number is this?

MR. MEISLER: Matter number 20. Motion of Donald R. Sweeten and Sara E. Sweeten to compel debtors' performance under lease of non-residential real property.

THE COURT: Well, that's fine. In fact, I'm not going to be here October 21st. So that hearing -- the original hearing date just isn't going to work. I don't know how that is still on. I'm going to be at the NCBJ -- I'm going to be flying back from the NCBJ that day.

MR. MEISLER: Okay.

THE COURT: So --

MR. MEISLER: So, Your Honor, that should work out well and that means that --

THE COURT: Well, it should work out well for them but if there are any other matters that you have on for the 21st, they should get moved.

MR. MEISLER: I agree. That, of course, makes sense.

THE COURT: Okay.

MR. MEISLER: Your Honor, this matter, the Sweetens matter, may be an evidentiary hearing.

THE COURT: Okay. Do you have other matters on -- a lot of other matters on for that day?

MR. MEISLER: Your Honor, I would expect that if there's any unresolved contractual issues or objectors, I would imagine that we would try and put those on for the hearing on the 22nd of October so that we can wrap up our contract objections.

THE COURT: Well, I just don't want to get caught in having, you know, a three or four hour evidentiary hearing and then have several other evidentiary hearings that day. So, if you're going to have other evidentiary hearings, you should probably move them to a different day than the 22nd.

MR. MEISLER: Of course, Your Honor. We'll work with your chambers to make sure we have it scheduled appropriately.

THE COURT: Okay. All right.

MR. MEISLER: Your Honor, on that note, we have completed our hearing for today.

THE COURT: Okay. Let me just -- okay, I just -- I

didn't have anything in my book for October 21st so I'm just troubled that there was something on the calendar for that date. I -- Matt, can you make sure that you check with Dorothy and Rosemary to be -- and clear on that? Okay. Thank you.

MR. MEISLER: Thank you, Your Honor.

THE COURT: Okay. So, anyone who wishes to leave and is not particularly interested in the American Aikoku dispute should feel free to do so, at this point.

MR. BERGER: Your Honor, may I just hand up my stipulations before that?

THE COURT: Yes.

MR. BERGER: Thank you.

THE COURT: Oh that -- I know, the air conditioner -- it's hot today so the air conditioner's going.

MR. MEISLER: Your Honor, we also have a stipulation for Federal Screw --

THE COURT: Right, I saw that.

MR. MEISLER: -- which we submitted.

THE COURT: So that'll get entered today.

MR. MEISLER: Thank you.

THE COURT: Yeah. Okay. Okay. I have on the calendar the objection of American Aikoku Alpha Inc. And that's A-I-K-O-K-U Alpha Inc, to notice of non-assumption under modified plan with respect to certain expired or terminated contracts or leases previously deemed to be assumed or assumed

and assigned under the original confirmed plan. This American Aikoku matter has been the subject of quite a bit of activity in the court and although its resolution involves relatively simple issues, it's made somewhat complicated by the procedural posture that it's in.

The debtors in this case had a number of executory contracts with American Aikoku and proposed in a motion filed in connection with a proposed sale of their steering business to an entity named Platinum in late 2007 to assume and assign certain American Aikoku contracts to Platinum as part of that transaction. In January of 2008, American Aikoku objected to that proposed assumption and assignment. It did so twice in objection and then a modified objection from -- in the -- in January of 2008 -- I'm sorry. In July of -- now I have my dates mixed up.

I'm sorry. In January of 2008, American Aikoku objected to the assumption and assignment of its contract in respect of the proposed sale of the steering and half-shaft business. That was the second objection to the proposed sale and assumption and assignment and it was filed in January 29th 2008. It also responded to a cure notice set out by Delphi on January 23, 2008 in connection with the proposed assumption and assignment of the contracts to the buyer in that proposed transaction.

The parties subsequently negotiated a resolution of

that dispute which was memorialized in a stipulation dated May 8th 2008 which fixed American Aikoku's cure claim and resolved American Aikoku's objection to the proposed assumption and assignment. The Platinum equity purchase of the steering and half-shaft business did not close and consequently, the contracts were not at that time -- were not assumed and assigned, there being no assignee to assign them to.

Thereafter, the debtors made a motion to modify the Chapter 11 plan that in the meantime had been confirmed in this case. And, in connection with that motion, sought to obtain an order providing that contracts that would have been previously deemed to be assumed or assigned pursuant to the original confirmed Chapter 11 plan, would now, under the revised plan, not be assumed. That notice was sent out to American Aikoku on July 2, 2009.

American Aikoku objected to that result, contending that, notwithstanding that the originally confirmed plan in this case contemplated the assumption and assignment of its contract under its own terms which involved, among other things, the acquisition of the equity and the debtors by a group of investors which subsequently did not close, that the May 8th 2008 stipulation required the debtors to assume its contracts under any circumstances.

That dispute raised a series of issues related to the interpretation of the May 8th stipulation all in the context of

the debtors' determination, based on the changed circumstances that they faced including the remarkable and unforeseen downturn in the global auto business, not to continue with the American Aikoku contracts.

Thereafter, the debtors obtained approval of their current or present Chapter 11 plan's confirmation. That Chapter 11 plan, which is the Chapter 11 plan at this point in this case, contemplates the acquisition of the debtor's various businesses and assets by either GM with respect to specific assets or a group of the debtor's debtor-in-possession lenders or in certain instances the retention of those assets -- certain assets by the reorganized debtors.

The Court, nevertheless, was faced with the objection by American Aikoku to the non-assumption of its contracts. I say nevertheless because it became clear at the hearing, held by the Court on August 17th 2009, that the debtors now proposed to assign to the DIP group buyer -- I'm sorry -- and/or to GM and I actually think it's to GM, the American Aikoku agreements not anymore wanting them to be rejected.

Ostensibly, that would've resolved the disputes between the parties since it would've rendered the issues pertaining to the May 8th stipulation moot in that the debtors would have to cure prepetition defaults or provide adequate assurance for prompt cure of prepetition defaults under Section 365(b)(1)(A) of the Bankruptcy Code in order to implement such

assumption and assignment.

However, the debtors, in connection with the briefing of the hearing for August 17th of this year, contended that, notwithstanding the May 8th 2008 stipulation which referred to a significant cure claim of well over 400,000 dollars of prepetition debt under these contracts, the parties, that is American Aikoku and the debtors, had several months before, in January of 2008, agreed to a modified contract covering the same subject matter which superseded the contract referred to in the May 8th stipulation. And in that agreement agreed that, in connection with any assumption and assignment of that contract, there would be no cure claim whatsoever.

Therefore, the debtors contend that the parties, by their agreement, at this point, are not dealing with a prepetition executory contract at all but instead are dealing with a postpetition agreement governed by the terms of the January 2008 modification and that, therefore, the debtors are free, as per the terms of that agreement, to assign that contract to the buyer in connection with the current confirmed Chapter 11 plan without the need to pay anything to American Aikoku in respect of its prepetition claim.

That is the issues before the Court have morphed into issues pertaining to the interpretation of and the effect of the January 2009 modification of the agreement and the effect on it, if any, of the subsequent May 8th stipulation as opposed

to issues involving the assumption and assignment of a prepetition contract.

Having laid out that procedural background, let me return then to a couple of fundamental legal points which govern this dispute. First, it is clearly the case that a debtor in Chapter 11 is not authorized to pay prepetition debt except under two circumstances outside of a confirmed Chapter 11 plan that goes effective.

The first circumstance is highly unusual. It involves the situation where the debtor, before a plan is confirmed, obtains authorization from the Bankruptcy Court on notice to pay pre-bankruptcy unsecured debt, notwithstanding that all unsecured creditors are not being paid, because of the net benefit to the estate of doing so. And in most courts, the necessity to do so, to prevent the estates from having an injury that would be greater than the net effect of paying the debt. See, generally, In re Kmart Corporation 359 F.3d 866 (7th Cir. 2004), rehearing and rehearing en banc denied, 2004 U.S. App. Lexis 9050 (7th Cir. May 6, 2004), cert. denied, 543 U.S. 995 (2004).

As the 7th Circuit said in that case, "pre-filing debts are not administrative expenses. They are the antithesis of administrative expenses. Filing a petition for bankruptcy effectively creates two firms. The debts of the pre-filing entity may be written down so that the post-filing entity may

reorganize and continue in business if it has a positive cash flow. Treating pre-filing debts as administrative claims, that is claims entitled to a hundred percent payment and that should be paid currently against the post-filing entity, would impair the ability of bankruptcy law to prevent old debts from sinking a viable firms -- firm."

Nevertheless, the Kmart decision and decisions in this district, recognize that under limited and exceptional circumstances, pursuant to Section 363 (b) of the Bankruptcy Code, a court may provide authorization to pay prepetition debt, again, if such payment is necessary to preserving the debtors' business, an opportunity for reorganization and the net benefit of such payment, including the difference between a hundred cents being paid now and tiny bankruptcy dollars being paid later, flows to the debtors' estate. Id. see also In re Shadow Gay Corporation, 80 B.R. 279, 287 (S.D.N.Y. 1987) and In re Ionosphere Clubs Inc., 98 B.R. 174, 178 through 179 (Bankr. S.D.N.Y. 1989).

In that case, although laying out the exception to the general rule that prepetition debts may not be paid outside of their payment with usually tiny bankruptcy dollars under a plan, a court has authority to grant payment. Judge Lifland found that the payment requested in that case was not critical to the debtors' reorganization and directed that such payment not be made. In other words then, it is extremely unusual to

pay prepetition unsecured debt outside of a plan and such payment should only be made after sufficient notice and Court approval is granted on the basis that I've just outlined.

The other way in which prepetition debt may be paid outside of a plan as specified in the Bankruptcy Code under Section 365(b)(1)(A) which provides that as a condition to a debtors assuming an executory contract, the debtor must cure or provide adequate assurance that it will promptly cure any defaults under the prepetition contract, including -- well, specifically monetary defaults. See also South Street Seaport Limited Partnership v. Burger Boys In re Burger Boys 94 F.3d. 755, 763, (2nd Cir. 1996).

The debtors' determination to assume and/or to assume and assign an executory contract is expressly, under Section 365(a), subject to Bankruptcy Court approval on notice. And the request for such approval is a contested matter under the Bankruptcy Code. Id. -- again, it's page 763. The standard for approving a request to assume and/or to assume and assign executory contract in this circuit is set forth in Orion Pictures Corporation v. Showtime Networks, Inc. In re Orion Pictures Corporation, 4 F.3d 1095 (2nd Cir. 1993) where the Second Circuit stated that in deciding such a motion, the Bankruptcy Court has to determine whether it's a proper exercise of the debtors' business judgment. Id. at 1099.

One of the key features of the assumption of an

executory contract, as I noted, is the payment of any prepetition defaults. It clearly would not make good business sense to agree to pay prepetition defaults that did not exist. Here, I have already determined and stated on the record that, based on my review of American Aikoku's objections to the proposed assumption and assignment of its contract filed in January of 2008, as well as the debtors' response thereto and the ultimate stipulation pursuant to which they resolved those issues, that was, again, added into on May 28th 2008, the parties resolved a specific objection to a specific proposed assumption and assignment sought pursuant to a specific contested matter. And that the proposed treatment of American Aikoku's contracts, pursuant to the May 28th stipulation, was limited to the assumption and assignment proposed by the debtors at that time which, as I've noted, did not -- was not consummated.

The contention that was made by American Aikoku that the agreement to treat it's contracts, under any circumstances in the future, as being automatically assumed and assigned, simply does not fit into the context of Section 365 that I've just described. Clearly American Aikoku, I believe, was not agreeing to permit its contract to be assumed and assigned to anyone but was focusing on the specific transaction that had been noticed by the debtor. And, similarly, the debtors had not agreed to assume and assign the contract under any

circumstances, given that they did not have an assignee other than, at the time, than the proposed transaction, that there was no relief sought to obtain approval to assign the contract and assume it under any circumstances but only, again, in the context of the specific contested matter that was before the Court.

And finally, based on the fact that I would not have approved such an agreement, given that the debtors' business judgment in agreeing to pay in excess of 400,000 dollars of cure costs and create an administrative liability for any breach of the contract post-assumption would not, as a matter of business judgment, be appropriate except in a specific context that the Court could evaluate, which again, was the proposed sale of the steering and half-shaft business to Platinum contemplated in late 2007/early 2008 and/or the debtors' emergence under its first confirmed plan both of which transactions ultimately failed to be consummated.

So for those reasons, I had previously determined that American Aikoku whose objection to the notice of non-assumption was not well taken and should be denied.

Subsequently the debtors again, as I noted, in August of this year pointed out that, apparently unbeknownst to the parties who negotiated the May 28, 2008 stipulation and in any event not identified in the May 28, 2008 stipulation, the debtor and American Aikoku had agreed, on January 29, 2008, to

enter into a new agreement that would supersede and replace the American Aikoku contracts.

"And that such agreement, in addition to stating that it is a new agreement between the buyer and seller and supersedes and replaces any prior purchase orders or other agreements between the buyer and seller with respect to the subject matter hereof also reflects that each of the buyer and the seller acknowledges and agrees that any prior purchase orders or other agreements between the buyer and seller, which are superseded and replaced by this purchase order as of its effective date, shall no longer be subject to assumption or rejection under the United States Bankruptcy Code. And the seller hereby waives any right to assert any of the rights incident to assumption or rejection, including but not limited to the payment of cure with respect to any such prior purchase orders or other agreements." I'm reading from purchase order SAG 90 I 2815 dated January 29, 2008. Which again, states on every page this changes, amends or supersedes a purchase order now in your possession which was sent by Delphi to American Aikoku and which is in the record of this matter.

Given that purchase order, which there's no dispute was subsequently performed, it would appear to me that both parties are now, under Michigan law, bound by the terms of that purchase order unless there's been any intervening amendment of that purchase order, see Kvaerner U.S. Inc. vs. Hakim Plast

Company, 74 F.2d 709, 714 (ED Michigan, 1999). See also Michigan Comp Law annotated section 440.22061 West 2009 as well as the terms of the purchase order itself which states that if seller accepts this contract in writing or commences any of the work or services which are the subject of this contract, seller will be deemed to have accepted this contract. Again, it's clear to me that the parties are bound by the terms of the purchase order.

It was, nevertheless, argued by American Aikoku on August 17th that the May 28, 2008 stipulation revived the executory prepetition nature of the parties' agreement and recreated or gave new life to the obligation of Delphi to cure any prepetition defaults under that agreement, as agreed to by the parties in the stipulation upon the assumption and assignment of the contract.

The hearing on August 17th was not an evidentiary hearing and it appeared to me that the change in direction, the procedural change in direction of this matter whereby now the debtors were actually seeking to have the January 29, 2008 purchase order assigned to the buyer under the presently confirmed plan, that the parties should have some additional time to address the issue of the propriety of that assignment without any court approval and the continued validity of the January 29, 2008 purchase order in light of the May 28, 2008 stipulation.

The parties did submit supplemental pleadings on that. Neither party has raised an evidentiary issue or requested an evidentiary hearing as to their intent in entering into the May 28, 2008 stipulation in light of the January 29, 2008 contract which superseded the -- or purported to supersede the executory prepetition contract.

So it appears to me that what I have before me is simply a legal issue based upon -- that should be decided based upon the foregoing basic legal propositions regarding the times when a debtor is authorized to pay prepetition debt that I've discussed, as well as my review of the purchase order from January of 2008 and the May 28, 2008 stipulation.

Based on my review of those documents and the case law and authorities that I've just described, I conclude that the debtor did not have authority pursuant to the May 28, 2008 stipulation, to resurrect its prepetition contract and agreed to pay the debt owing prepetition under that contract. In light of the debtors having previously agreed with American Aikoku that that debt would no longer be entitled to a cure payment under Section 365 and that that contract would not longer be subject to assumption and assignment under Section 365 of the Bankruptcy Code.

In essence, such an agreement would have been an agreement to pay prepetition debt and clearly that agreement was not so described in the stipulation or to the Court. And

the Court did not, therefore, consider whether the debtor met the very difficult standard of obtaining authorization to pay prepetition debt outside of a plan or outside of assumption of a contract under Section 365.

Again, the contract had previously been modified so that it was now a postpetition contract and the parties had agreed that there would be no cure claim. So under K-Mart, Chateauguay and Ionosphere, the Court would never have authorized the debtor to have entered into the May 28, 2008 stipulation if that would have been the effect of the stipulation. It wouldn't have met the test of those cases, nor would it have met the business judgment test of Orion Pictures since it would never have been a valid exercise of the debtor's business judgment to pay over 400,000 dollars of prepetition debt that it had previously agreed with American Aikoku that it didn't need to pay.

Such a transaction would have obviously required notice and a hearing. And absent proper notice and a hearing would be avoidable if the debtor tried to implement it, which of course it's not attempting to do. See In Re Roth America, Inc., 975 F.2d, 949, 952, note 3, (3rd Cir. 1992) as well as Section 549(a) of the Bankruptcy Code.

The stipulation also makes this relatively clear in that the parties stated, on page 7, that the debtors are authorized to enter into this stipulation with regards to the

claims matters addressed herein, either because the claims involve ordinary course controversies or pursuant to that certain amended and restated order under 11 U.S.C. 363 502 and 503 and Federal Rule of Bankruptcy Procedure 9019(b) authorizing debtors to compromise or settle certain classes of controversy and allow claims without further Court approval, entered by this Court on June 26, 2007.

As I've stated clearly, given that American Aikoku's interpretation of the May 28th stipulation would have resurrected and required full payment of over 400,000 of prepetition debt it would not have been an ordinary course transaction or controversy. Moreover, the amended and restated June 26, 2007 order, referred to in the paragraph I just quoted, states in paragraph 7, "The debtor shall not pay any prepetition claims without a separate Bankruptcy Court order."

Clearly the May 28, 2008 stipulation did not authorize the payment of a prepetition claim except in the context of an assumption or a rejection in connection with the specific transactions contemplated by that stipulation. So it is clear to me that the parties did not intend, by the May 28th stipulation, to resurrect a contract that had been superseded by the January 29, 2008 purchase order.

It is also clear to me that even if they intended to do so they did not succeed in doing so and could not have succeeded in doing so and that they would not have obtained

court approval to do so if the matter had been properly noticed, which it wasn't.

So for all of those reasons, I conclude that if the debtors do not intend to assign their rights under the American Aikoku contract, they are not required to do so -- they are not required to assume and assign it and they're not required to pay the cure amount provided in the May 28th stipulation.

And further, that if the debtors intend to assign the contract as reflected in the January 29, 2008 purchase order, they are free to do so without the need to pay any prepetition claim of American Aikoku because that purchase order was not modified by the May 28th stipulation. And even if it had been modified by the May 28th stipulation, which again I conclude the parties did not intend to do, the May 28th stipulation did not suffice as a basis for obtaining court approval of such an extraordinary transaction that would have resurrected and required the payment of a substantial amount of prepetition debt outside of a plan.

So the debtors can submit an order consistent with my ruling.

MR. MEISLER: Your Honor, we will submit an order to chambers.

THE COURT: Okay. You should cc counsel for American Aikoku in that e-mail.

MR. MEISLER: Thank you, Your Honor.

(Proceedings Concluded at 11:28 a.m.)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Hana Copperman, certify that the foregoing transcript is a true and accurate record of the proceedings.

Hana Copperman

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